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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

JEFFREY ROBERT MALONE,

Defendant and Appellant.

C042537

(Super. Ct. Nos.
02F01273, 02F06928)

Defendant Jeffrey Robert Malone pled no contest to forgery in case No. 02F01273 (the forgery case). In exchange, six related counts (false personation, receiving stolen property, possessing a blank check with intent to defraud, and three counts of forgery) and case No. 01F09281 were dismissed with a *Harvey* waiver.¹

Defendant pled no contest to false personation in case No. 02F06928 (the false personation case). In exchange, counts

¹ *People v. Harvey* (1979) 25 Cal.3d 754.

of possessing a blank check with intent to defraud and driving while the privilege is suspended or revoked were dismissed.

Imposition of judgment in both cases was suspended and defendant was placed on probation for five years on the conditions, among others, that he not possess a scanner² or digital camera (condition 6), not intentionally conceal the source, destination or content of any electronic communications transmitted or otherwise sent by him (condition 9), and disclose all e-mail accounts, all Internet accounts, and any other means of access to any computer or computer network, disclose all passwords and access codes, and consent to search of such computers at any time and seizure of any information or data contained therein without a search warrant or probable cause (condition 11).

Defendant contends the trial court erred by overruling his objections that condition 6 is "overbroad," and conditions 9 and 11 violate "his right to privacy." We disagree and shall affirm the judgment.

FACTS

I

The Forgery Case

In February 2002, officers contacted defendant, who was the front seat passenger of a car that had been stopped for a traffic violation. When asked for identification, defendant

² In context, the probation condition refers to an optical scanner not a radio scanner.

orally identified himself as Richard James Lint and provided a date of birth and Social Security number. However, the driver told officers that defendant's name was "Brian." When confronted, defendant identified himself as Brian Everett Malone, with a different date of birth and Social Security number. Defendant consented to a search of his pockets. A wallet from his jacket contained several fictitious California drivers' licenses and a medical license card in a fictitious name, all bearing defendant's picture. Defendant also had a checkbook with several checks in the name of Richard E. Lint. The checks appeared to be forged and had two different account numbers at the bottom. Defendant's pockets contained several receipts indicating that he had used the forged checks to purchase merchandise. Defendant also possessed a Bank of America Visa check card in the name of J. Avelar. The card had been stolen during an auto burglary in February 2002.

II

The False Personation Case

In August 2002, a California Highway Patrol Officer conducted a traffic stop of defendant for expired registration tags. When asked for identification, registration, and proof of insurance, defendant said that he did not have a driver's license and did not have any insurance proof. He did not produce a registration card and said that he did not believe the registered owner had insurance on the car. Defendant was detained pending identification. When asked who he was, he gave the name "Bryan Dooley," gave a date of birth, and gave an

address in Cranston, Rhode Island. He said that he had just traveled from Rhode Island to California and that he did not have a California driver's license or identification card. Defendant gave the officer the name and telephone number of the woman who had loaned him the car. When contacted, she told the officer that Jeffrey Malone had just left her house one-half hour previously. Her description of Malone and his clothing matched the detained defendant. He was arrested for possessing false identification and giving false information to a peace officer. The officer searched the car and found a large sealed plastic bag containing blank checks and a report that contained names and identification numbers, code numbers, and account numbers. In the back of the car, the officer found two black wallets and a checkbook. The wallets contained California drivers' licenses issued to two different names and license numbers, both with defendant's picture on them. There were also receipts and cards with various people's names on them. Defendant eventually admitted that he was Jeffrey Malone and that there was a warrant out for his arrest. He indicated that Bryan Dooley was his cousin.

III

Case No. 01F09281 (Dismissed with Harvey Waiver)

In November 2001, officers went to a residence to serve a felony warrant. Officers contacted defendant, who let them into the residence. Officers saw printed checks on a table and saw a check-manufacturing program displayed on a computer screen. Officers also saw several drivers' licenses in different names,

along with Social Security numbers and numerous credit cards in the names of others.

DISCUSSION

Defendant contends probation conditions 6, 9, and 11, restricting his possession of certain items and requiring him to disclose Internet and e-mail information and to submit to search and seizure of property unrelated to his offenses, are invalid. We disagree.

"In granting probation, courts have broad discretion to impose conditions to foster rehabilitation and to protect public safety pursuant to Penal Code section 1203.1. [Citation.] 'The court may impose and require . . . [such] reasonable conditions[] as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer.' (Pen. Code, § 1203.1, subd. (j).) The trial court's discretion, although broad, nevertheless is not without limits: a condition of probation must serve a purpose specified in the statute. In addition, we have interpreted Penal Code section 1203.1 to require that probation conditions which regulate conduct 'not itself criminal' be 'reasonably related to the crime of which the defendant was convicted or to future criminality.' [Citation.] As with any exercise of discretion, the sentencing court violates this standard when its determination is arbitrary or capricious or '"exceeds the bounds of reason, all of the

circumstances being considered.'" [Citations.]' [Citation.]" (People v. Carbajal (1995) 10 Cal.4th 1114, 1120-1121; accord, People v. Lent (1975) 15 Cal.3d 481,486.)

"The burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.' [Citation.] Concomitantly, '[a] decision will not be reversed merely because reasonable people might disagree. "An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge." [Citations.]' [Citation.]" (People v. Superior Court (Alvarez) (1997) 14 Cal.4th 968, 977-978.)

Defendant claims there was no "evidence available to the court" that tied his offenses "to the use of either a scanner or a digital camera." Thus, he claims condition 6, which prohibits him from possessing those items, has no relationship to his offenses, forbids conduct not itself criminal, and is not reasonably related to future criminality. The claim has no merit.

The evidence showed that defendant possessed several fictitious drivers' licenses; a fictitious medical license; several fictitious checks; a stolen credit card; blank checks; fictitious Social Security cards and other cards; a report containing names, identification numbers, code numbers and

account numbers; and receipts in various people's names. Officers searching defendant's residence found printed checks and a computer screen displaying a check-manufacturing program.

The evidence did not show whether any of the foregoing items had been created using a scanner or a digital camera. Nevertheless, the trial court could deduce that defendant, an experienced identity thief, could use those tools in conjunction with a computer or the Internet to create fictitious documents in the future. (*People v. Burden* (1988) 205 Cal.App.3d 1277, 1281 [prohibition against checking or charge account "directly related to the crime of writing bad checks and effectively prevents future acts of this nature"])). Scanners and digital cameras are common computer peripherals and their usefulness in facilitating some of the present crimes can hardly be overstated. The probation condition was reasonably related to future criminality and was not an abuse of discretion. (*People v. Carbajal, supra*, 10 Cal.4th at pp. 1120-1121; *People v. Lent, supra*, 15 Cal.3d at p. 486.)

For this same reason, there is no merit to defendant's contention that the disclosure requirement (condition 9) and the search condition (condition 11) are unreasonable because they are not reasonably related to his offenses. Although the evidence did not show that he "used Internet sources or e-mail" to "gather information relating to" his crimes, the court could deduce that those tools could be used in the future, for example, to obtain account information (analogous to the "report that contained names and identification numbers, code numbers

and account numbers"), a substitute check-manufacturing program, or electronic versions of checks forged by other identity thieves. Because e-mail and the Internet could foster repetition of many of the crimes shown by the evidence, conditions of probation that monitor defendant's use of those tools directly "serve the dual purpose of rehabilitation and public safety." (*People v. Keller* (1978) 76 Cal.App.3d 827, 839, disapproved on other grounds in *People v. Welch* (1993) 5 Cal.4th 228, 237; see *People v. Burden, supra*, 205 Cal.App.3d at p. 1281.) Unlike the search condition in *Keller*, which was imposed in response to the "theft of a 49-cent ballpoint pen," and which the court likened to the "use of a Mack truck to crush a gnat," the present conditions are reasonably related to the proper goal of ensuring that defendant does not use e-mail or the Internet in the future to gather and disseminate information related to identity theft. (*People v. Keller, supra*, at p. 840; *People v. Burden, supra*, at p. 1281.)³

We are aware of the rule that, "[i]f available alternative means exist which are less violative of a constitutional right and are narrowly drawn so as to correlate more closely with the purpose contemplated, those alternatives should be used.'" [Citations.]" (*People v. Burden, supra*, 205

³ Because the present probation conditions are permissible under the standards of *People v. Keller, supra*, 76 Cal.App.3d 827, it is unnecessary to consider defendant's argument that *Keller* was erroneously rejected by the court in *People v. Balestra* (1999) 76 Cal.App.4th 57 at page 67.

Cal.App.3d at p. 1281.) However, narrowing the probation conditions to exclude e-mail and the Internet would frustrate, rather than correlate more closely with the purpose of preventing future acts of identity theft. The probation conditions were not an abuse of discretion.

DISPOSITION

The order granting probation is affirmed.

_____, ROBIE, J.

We concur:

_____, DAVIS, Acting P.J.

_____, HULL, J.